

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 244 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

AHIR RAIYA RAMA

Appearance:

MR D.B.Patel, APP for Petitioner

MR TIRMIZI for MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE D.G.KARIA

Date of decision: 03/02/97

ORAL JUDGEMENT

(Per Vaidya, J.)

This appeal by the State of Gujarat is directed against the impugned judgment and order dated 13.12.1984 delivered in Sessions Case No.64 of 1994 passed by the learned Addl. Sessions Judge, Junagadh, wherein respondent-Ahir Raiya Rama who came to be tried for the alleged offence punishable under sections 302 and 324 of the Indian Penal Code was at the end of the trial ordered to be acquitted.

2 According to the prosecution, the incident in question took place on 26.5.1984 at about 8.00 AM in the sim of village Haripur wherein Momna Mamad Punja was done to death with stick blows given on his head while his father Punja Kala and Valibhai Punja were injured by sticks. This incident was witnessed by three eye witnesses, namely, P.W.4 Punja Kala, P.W.7 Sajid Mamad and PW 9 Ismail Sauji. On the basis of this fact Bai Fatma PW 3 filed a complaint before Talal Police Station on the basis of which, after the investigation was over the accused came to be chargesheeted to stand trial for the alleged offence. At trial the accused pleaded not guilty and claimed to be tried. The accused also submitted a written defence statement exh.55 wherein it is his case that he was having an agricultural land in village Haripur and was cultivating the same. As the groundnut crop was ready, he had engaged Punja Kala and Mamad Punja on daily wages of Rs.30/- and Rs.10/respectively. On 25.5.1984 they started digging out the groundnuts. In the evening when he went to the field he scolded Punja Kala as he was not digging the groundnut crop properly. To this he took an exception and told him that the land does not belong to him. Despite the same he remained on the field and after completion of the work when other labourers left accused asked Punja not to come for labour work on the next day. On the next day in the morning at 8 AM he had gone to the field to take care of the crop and at that time Punja Kala and Valibhai were found digging out the groundnut crop. Thereupon accused told Punja Kala as to why he has come to the field even though he was asked not to come. Punja Kala did not pay any heed to the same and on the contrary he picked up a quarrel with him. In the meantime Mamad, son of Punja came from the village and he was armed with a stick. He threatened him to run away as the land belonged to him. However, the accused refused to oblige and therefore Mamad Punja gave a stick blow on the back of the accused. At this time Punja Kala was armed with axe and he gave a blow on the back of the accused as a result of which he started bleeding and his clothes became blood-stained. Apprehending that Mamad

Punja and Punja Kala will further beat him he started running. In the meantime Mamad Punja took him in his grip but when Punja Kala was about to give a second blow it hit Mamad Punja as a result of which he got released. After receiving this injury of the axe he went straightaway to Talala police station and complaint exh.53 against Punja Kala and Mamad Kala was filed from where he was forwarded to the Medical Officer, PW No.1, Jamnadas Manji, who examined him and issued a medical certificate which is produced at exh.10. In substance, it is the case of the accused that he was absolutely innocent and he has not committed any offence. The injury received by Mamad Punja is in fact an injury caused by Punja Kala while trying to give a blow to the accused when the scuffle between him and Mamad Punja was going on.

3 The learned Addl. Sessions Judge after duly appreciating the prosecution case acquitted the present accused as stated above in para 1 of this judgment giving rise to the present acquittal appeal.

4 Heard Mr Patel and Mr Tirmiji. The learned APP has taken us through the evidence of all material witnesses and the reasons for acquittal given by the trial Court. The learned APP submitted that there was an evidence of injured witnesses which was duly corroborated by the medical evidence on the record and in that view of the matter the learned Judge has committed an error in acquitting the accused.

5 Now having gone through the material evidence and heard the learned advocates appearing for the respective parties, it clearly transpires that the case lies within the narrow compass, namely, whether the incident in question took place in the manner suggested by the prosecution or as suggested by accused Ahir Raiya Rama. In the instant case, the learned Judge by giving cogent reasons has disbelieved the version of the prosecution witnesses. Therefore, the learned APP is not right when he submitted that some weight should be attached to the witnesses. Even if the evidence of injured witness was to be given credence, then even that standing by itself, in view of the probable defence version would not justify this Court to reverse the order of acquittal. When the accused raised a defence and that is found to be probablised then, in that case, the burden lying on the accused is not heavy as on prosecution which was supposed to prove its case beyond doubt much less reasonable doubt. In the very nature of the defence taken up by accused where there is word against the word of

prosecution witnesses. All the genesis of the prosecution is rendered doubtful that is to say whether the incident got ignited in the manner suggested by the prosecution or it happened in the manner suggested by the defence. When it is not possible for the Court to decide, it is always advisable to give the benefit of doubt to the accused, which the trial Court rightly did. Since we ultimately confirm the impugned order of acquittal, we do not deem it necessary either to reproduce or elaborate the reasonings given by the trial Court. Suffice it to say that the trial Court has given cogent and convincing reasons for acquitting the accused. In this view of the matter there is nothing on the basis of which this order of acquittal can be reversed.

In the result, this appeal fails and the same is dismissed accordingly.
